

FRAMEWORK AGREEMENT BETWEEN THE GOVERNOR'S WATER POLICY COUNCIL OF THE STATE OF CALIFORNIA AND THE FEDERAL ECOSYSTEM DIRECTORATE

This Memorandum of Agreement (Agreement) is entered into between the Governor's Water Policy Council of the State of California (Council) and the Federal Ecosystem Directorate (FED). The purpose of the Agreement is to establish a comprehensive program for coordination and communication between the Council and the FED with respect to environmental protection and water supply dependability in the San Francisco Bay, Sacramento-San Joaquin Delta Estuary and its watershed (Bay-Delta Estuary). In particular, this Agreement is intended to provide for increased coordination and communication with respect to:

Substantive and procedural aspects of water quality standard setting;
Improved coordination of water supply operations with endangered species protection and water quality standard compliance; and
Development of a long-term solution to fish and wildlife, water supply reliability, flood control, and water quality problems in the Bay-Delta Estuary.

RECITALS

1. The Agreement set forth in this document is in acknowledgement of the critical importance of the Bay-Delta Estuary to the natural environment and economy of California, in recognition of the multiple, complex resource management decisions that must be made to stabilize, protect, restore, and enhance the Bay-Delta Estuary, and in appreciation of the close interconnection of Federal and State interests and responsibilities in the Bay-Delta Estuary.
2. In April 1992, Governor Pete Wilson announced a comprehensive water policy for the State of California. That policy was aimed at meeting the needs of all the State's water users for safe, reliable water supplies while mitigating for past water-related harms to fish and wildlife and restoring and maintaining fish and wildlife populations and habitat. Governor Wilson placed special emphasis on solving the problems of the Bay-Delta Estuary, recognizing it as "the centerpiece of California's most intractable water problem."
3. As part of his policy, the Governor announced that he would appoint an Oversight Council to help guide the State's long-term planning and decision-making process. On December 9, 1992, the Governor created the Bay-Delta Oversight Council (BDOC) and directed it to develop a comprehensive program to protect and enhance the Bay-Delta Estuary by addressing water quality issues, design and operation of water export systems, levee and channel maintenance, and means of protecting the Bay-Delta Estuary and its fish and wildlife resources. He proposed using the California Environmental Quality Act (Cal. Pub. Res. Code § 21000 et seq.) and the National Environmental Policy Act NEPA (42 U.S.C. § 4321 et seq.) as the planning framework for the decision-making process.
4. Also on December 9, 1992, Governor Wilson created the California Water Policy Council consisting of representatives of eight State departments and agencies with responsibilities for implementing State water policy. Governor Wilson charged the Council with sharing information and coordinating activities related to the State's long-term water policy.
5. The Governor's water policy also directed the State Water Resources Control Board (SWRCB) to work closely with the U.S. Environmental Protection Agency (EPA) to develop interim water quality standards for the Bay-Delta Estuary. The SWRCB released a draft interim water right decision in December 1992, but subsequently withdrew it. On March 25, 1994, the SWRCB announced plans to hold additional workshops, and to prepare a draft water quality control plan for release in December 1994.
6. "On September 10, 1993, the U.S. Bureau of Reclamation (USBR), U.S. Fish and Wildlife Service (USFWS), National Marine Fisheries Service (NMFS) and EPA signed an Agreement for Coordination creating the Federal Ecosystem Directorate with the goal of coordinating Federal resource protection and management decisions in the Bay-Delta Estuary and its watershed. Federal responsibilities affecting the Bay-Delta Estuary include listing species as threatened or endangered and conducting consultations under the Federal Endangered Species Act, implementing the Central Valley Project Improvement Act (CVPIA) (Public Law 102-575, Title XXXIV), operating the Central Valley Project, reviewing and, where necessary, promulgating water quality standards under the Clean Water Act (33 U.S.C. § 1251 et seq.), and reviewing water development proposals under the Fish and Wildlife Coordination Act (16 U.S.C. § 661 et seq.), NEPA, Section 404 of the Clean Water Act (33 U.S.C. § 1344), and the Rivers and Harbors Act (33 U.S.C. 9401 et seq.) The Agreement for Coordination also states the Federal agencies' commitment "to work closely with all involved agencies of the State of California and the Federal government so that, to the greatest extent possible, our implementation of Federal law in the Bay-Delta Estuary complements the State's role in allocating water resources and the State's continuing efforts to preserve, protect, and enhance the natural resources of the estuary."
7. On December 15, 1993, the FED announced a series of coordinated actions and proposals to protect

the fish and wildlife resources of the Bay-Delta Estuary. These included EPA's proposed water quality standards under the Clean Water Act , USFWS and NMFS actions to protect winter-run salmon, Delta smelt and Sacramento splittail under the Endangered Species Act (ESA) (16 U.S.C. § 1531 et seq.), and USFWS and USBR proposals under the CVPIA

8. 8. Additional water management and resource protection and management actions by State and Federal agencies with responsibility in the Bay-Delta Estuary will be required over the next several years. Close coordination between affected State and Federal agencies is desirable to achieve regulatory consistency and certainty and provide environmental protection in a manner which minimizes impacts on the State's economy and water resources.
9. There are three areas in which Federal-State coordination and cooperation with respect to the Bay-Delta Estuary are particularly important:

a. **Water Quality Standards Formulation.** Under the Federal Clean Water Act and the State of California's Porter-Cologne Act (Cal. Water Code § 13000 et seq.), the SWRCB and the EPA have complementary and closely related roles with respect to formulation of water quality standards for the Bay-Delta Estuary. Therefore, coordination between EPA and SWRCB is vital if adequate Bay-Delta protections are to be achieved and maintained.

b. **Coordination of Federal and State Project Operations with Regulatory Requirements.** There are numerous hydrological, contractual, and operational connections between the Federal Central Valley Project (CVP) and the State Water Project (SWP). These include the Coordinated Operation Agreement, approved by Congress in 1986 (Public Law 99-546); joint obligations to meet State water quality standards, State water rights permits, and Federal and State endangered species requirements and joint ownership and operation of San Luis Reservoir and San Luis Canal (the Joint-Use Facilities). The projects face a shared challenge in reconciling operational requirements with current and future statutory and regulatory requirements, particularly those relating to endangered species and water quality. Close coordination is necessary to identify operational issues related to statutory and regulatory compliance and to provide a forum for addressing problems and issues promptly as they arise.

In recognition of the complexity of fishery, habitat, water quality, and hydrodynamic issues confronting resource managers in the Bay-Delta Estuary, State and Federal agencies have participated for several years in the scientific study effort known as the Interagency Ecological Program (IEP). The IEP serves as an example of State-Federal cooperation in the Bay-Delta Estuary. The IEP data base and its programs provide a valuable source of scientific information as efforts are made to coordinate operational requirements with regulatory compliance.

c. **Long-Term Bay-Delta Solution.** State and Federal interests and responsibilities in the Bay-Delta Estuary are inextricably intertwined in the areas of fish and wildlife protection and enhancement, water quality protection, flood control, and water supply project operation. There is a shared State-Federal interest in pursuing long-term solutions that adequately address the multiple environmental, economic, and water supply interests in the Bay-Delta ecosystem. Federal and State agencies with responsibilities in the Bay-Delta Estuary must participate. Neither the Federal nor the State government, acting alone, can accomplish this vital task.

AGREEMENT

The Council and the FED agree as follows:

1. We commit to promoting maximum coordination, communication, and cooperation among the State and Federal agencies with interests and responsibilities in the Bay-Delta Estuary within the limits of existing law.
2. We commit to meeting the requirements of State and Federal law in a manner that considers how the overall costs in water and dollars for achieving environmental protection can be minimized.
3. We agree that a major goal of all State and Federal regulatory processes affecting the Bay-Delta Estuary should be to provide meaningful regulatory stability for beneficial uses of the Bay-Delta Estuary's resources. We believe that the best means to this goal is to develop a single, cohesive program consisting of water quality standards and other appropriate actions that meet all requirements of State and Federal law and which will remain in effect, absent unforeseen circumstances, for a period of years.
4. We agree that a primary component of providing regulatory stability is to integrate current and future implementation of the Federal and State Endangered Species Acts into a coordinated approach to resources management in the Bay-Delta Estuary. This can best be accomplished by

- taking a comprehensive ecosystem approach to the problems of the Bay-Delta Estuary.
5. We agree that it is essential for the State and Federal agencies with regulatory and resources management responsibilities in the Bay-Delta Estuary to reach consensus, consistent with applicable procedural limitations, on the appropriate level of protection to be achieved for the Bay-Delta Estuary.
 6. We agree to quarterly joint meetings between the membership of the Council and the FED to discuss resources management issues of mutual concern in the Bay-Delta Estuary, and to evaluate the progress being made in the areas of water quality protection, restoration of ecosystems, operations coordination, and development of a long-term Bay-Delta Estuary solution.
 7. We agree that the Interagency Ecological Program will be used as one of the sources of technical support for State-Federal cooperative efforts in the Bay-Delta Estuary.
 8. We endorse and concur with the points of agreement attached to this Framework Agreement and incorporated in it by this reference as [Exhibits A, B, and C](#), dealing respectively with:

State and Federal Processes for Setting Water Quality Standards for the Bay-Delta Estuary
Coordinating CVP/SWP Operations With Endangered Species, Water Quality, and CVPIA
Requirements

A Joint State-Federal Process to Develop Long-term Solutions for the Problems Affecting Public
Values in the Bay-Delta Estuary.

9. We recognize that as public agencies we each have specific statutory and regulatory authority and responsibilities, and that our actions must be consistent with applicable procedural and substantive requirements. This Agreement is intended to be in furtherance of the agencies' discharge of their respective authority and responsibilities, and its provisions are to be interpreted and implemented accordingly. Nothing in this Agreement is intended to or shall have the effect of constraining or limiting the agencies in carrying out their statutory responsibilities. Nothing in this Agreement constitutes an admission by any party as to the proper interpretation of any provision of law, including, without limitation, Clean Water Act Sections 101 (g) and 303, nor is anything in this Agreement intended to, nor shall it have the effect, of waiving or limiting any party's rights and remedies under any applicable law.